

EXHIBIT A

65VVVILH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

05 CR 621 (KMK)

ALBERTO VILAR,
GARY TANAKA

SUPPRESSION HEARING

Defendants.

New York, N.Y.
May 31, 2006
10:05 a.m.

Before:

HON. KENNETH M. KARAS,

District Judge

APPEARANCES

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
DEIRDRE McEVOY
MARC LITT
Assistant United States Attorneys

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-AND-

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Licker - direct

1 Q. During the second conversation, did the subject of a
2 subpoena come up?

3 A. It's hard to number the conversations. I can't say whether
4 it was the second or the third. It was sometime after the
5 first.

6 Q. Okay. Do you recall what time during the day this subject
7 came up?

8 A. I believe it came up prior to the time I returned to my
9 office at K&L which, as I said, I thought I place at about 1
10 o'clock.

11 Q. And what was the substance of the conversation?

12 A. At some point I became aware, I think, from speaking to Mr.
13 Feiter, Inspector Feiter, Postal Inspector Feiter, that they
14 had doubts about their abilities, the inspector had their
15 doubts about their ability to complete the search that day.

16 And someone, I don't remember if it was me or if it
17 was Marc Litt, I don't believe it was me, but someone suggested
18 that, as an alternative, if we would continue our agreement to
19 preserve the documents, we had already had that conversation,
20 and accept service of a grand jury subpoena that would allow
21 the postal inspectors to leave.

22 Q. You mentioned that you had a conversation about preserving
23 the contents of the office?

24 A. We had a general conversation about preserving relevant
25 information, wherever it was found.

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Shaw - direct

1 THE COURT: What was the home office recommendation,
2 did we get that?

3 THE WITNESS: Section 8.

4 THE COURT: Okay. I wasn't clear. Go ahead.

5 Q. Prior to applying for the -- strike that. Did you wind up
6 making an application for a Section 8 warrant in this case?

7 A. Yes.

8 Q. Prior to doing so, did you consider whether it was
9 necessary to obtain a Schedule 1 order or a Schedule 1 warrant?

10 A. Yes.

11 Q. What was the result of that consideration?

12 A. I rejected that option.

13 Q. Why?

14 A. A Schedule 1 order -- I was not looking for special
15 procedure material here, primarily I was not. And
16 consequently, the Schedule 1 option was not available to me. I
17 was not looking for excluded material, either.

18 Q. Why do you say you weren't looking primarily for special
19 procedure material?

20 A. I was looking at -- my view was that I was looking at
21 premises controlled by named suspects for material that they
22 had used to facilitate their own criminal activity. I was
23 searching, if you like, in simple terms, I was searching the
24 address of a suspect, for evidence of his criminality.

25 Q. Why does that -- what's the import of that for your

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Shaw - direct

1 maybe just happen to be in possession of material that I need
2 access to. And that's why they're inter parte. That's why the
3 bank would be given notice by me that I intend to make this
4 application, and they have a right of audience and to object.

5 THE COURT: Can I ask a follow-up? In the example you
6 gave in the Italian request, if the lawyer was a solo
7 practitioner who had his or her own office, their own computer,
8 own file cabinets, under your view of your authority under
9 Section 8, would it have been proper to go the Section 8 route
10 rather than the Schedule 1 route?

11 THE WITNESS: Yes.

12 THE COURT: Even though the lawyer obviously has
13 privileged information, and the privilege belongs to the
14 clients of that lawyer?

15 THE WITNESS: One can't obtain a warrant to access
16 privileged material. The warrant would be to access special
17 procedure material or exclude material only. I would be aware
18 that there was likely to be privileged material at the lawyer's
19 office, but I would not be applying for a warrant to access
20 privileged material.

21 THE COURT: So when you execute the search, how would
22 you decide what to take and what not to take? How would you
23 know what's privileged and what isn't privileged?

24 THE WITNESS: With the lawyer's office, I actually
25 took independent counsel with me in that particular situation,

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Shaw - direct

1 Q. Any other reason?

2 A. I don't recall anything in the MLAT that would suggest I
3 was going to find legal privileged material there. I have
4 no -- I don't recall -- thinking back to October last year, I
5 don't recall anything that gave me specific cause to believe
6 that.

7 Q. Did you ask anyone from the United States, either directly
8 or through the home office, whether they believed that it was
9 likely that potentially legally privileged material under U.S.
10 law might be found among the Amerindo documents at Cadogan
11 Tate?

12 A. No. I repeat that I was not searching -- I was not getting
13 a warrant to search for legal privileged material. There's no
14 facility to do that under English law.

15 Q. How did you determine to which court to take the warrant
16 application on October 10, 2005?

17 A. Having decided that I was going to apply for a Section 8
18 warrant, having seen that the home office also concurred with
19 that view, I had to apply before magistrate's court. I chose
20 Bow Street Magistrate's Court to do that.

21 Q. Why did you choose Bow Street Magistrate Court?

22 A. Bow Street Magistrate Court is the premier magistrate court
23 for the country. It's not too far from my office. I have
24 regular work at the court as part of my mutual assistance
25 function. And that's the court where the expertise lies in the

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Shaw - direct

1 field of mutual assistance.

2 Q. Did you show the warrant application to anyone prior to
3 taking it to court on October 10, 2005?

4 A. My senior supervisor.

5 Q. Who's that?

6 A. Detective Inspector Fuller.

7 Q. Why did you do that?

8 A. I'm not entitled to make an application for search warrant
9 without the approval of an independent supervising police
10 officer.

11 Q. Was he an independent supervising police officer?

12 A. Yes.

13 Q. Did you discuss the application with him?

14 A. I'm sure I did, but I can't remember the nature of the
15 conversation. But I wouldn't have just handed it to him and
16 walked off.

17 Q. Do you recall any questions that Detective Inspector Fuller
18 asked you about the application?

19 A. He asked -- I do recall him asking me logistical questions.
20 We were short of staff, as I mentioned earlier. This was
21 probably going to be a two-day event. Where was I going to get
22 the staff from to do it? I remember those questions. I don't
23 remember if there were further questions.

24 Q. Did Detective Inspector Fuller express any concerns about
25 the application?

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